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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,132

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EXAMINER

PAPE, JOSEPH

ART UNIT

PAPER NUMBER

3612

MAIL DATE

DELIVERY MODE

09/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,132	Applicant(s) KONERMANN ET AL.	
	Examiner Joseph D. Pape	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 14-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/6/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “struts” in claim 15 and the “flaps” in claim 26 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The use of the term “struts” does not appear in the specification. Also, “extruded profiles” and “built up sheet metal profiles” is not in the specification.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 15, 22-25, and 28-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 15, line 3, it is not clear whether the “bottom chamber sheet” is a further limitation of the “hollow chamber sheet structure” set forth in claim 14 or is a different structure. On line 4, “axles” has no clear antecedent basis.

In claims 22, 30 and 32, it is not clear how the chamber sheets can be extruded”.

In claims 23, 31 and 33, the exact meaning of the sheet metal profiles being “built-up is unclear.

In claim 24, lines 3-4, three features are set forth by which all of them serve to reduce the lifting effect and then the term “both” is used for the three features on the last two lines. This is indefinite.

Claim 25 includes indefinite phraseology similar to that of claim 24.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

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Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 14-19, 22, 24-25, 27-28, 30-33, as understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Steiner.

Re claim 19, note column 4 the last paragraph.

7. Claims 14-18, 22, 24-25, 27-28 and 30-33, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Linden et al.

Linden et al. disclose the claimed invention including a chassis hollow chamber sheet structure 2 comprising a flow duct.

Re claim 15, structures 3 are vertically oriented, and include longitudinally spaced pairs to form flanking hollow chamber sheets as broadly as recited. The term "sheet" has been interpreted to broadly mean "a broad thin piece of material". Elements 3 are considered to be such "sheet" as broadly as recited.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 20-21, 23, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner.

Steiner discloses the claimed invention except for the specific material out of which the body members are formed.

Section 2144.07 of the MPEP sets forth that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness.

See *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Further, in the instant case, examiner takes Official Notice that vehicle body members are known in the art to be constructed from metal or plastic materials.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the chassis member of Steiner from either metal or plastic because selection of such materials to construct a prior art device,

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notoriously well known to be constructed from such materials, is prima facie obvious in view of *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

11. Claims 20-21, 23, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linden et al.

Linden et al. disclose the claimed invention except for the specific material out of which the chassis member is formed.

Section 2144.07 of the MPEP sets forth that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness. See *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Further, in the instant case, examiner takes Official Notice that vehicle chassis members are known in the art to be constructed from metal or plastic materials.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the chassis member of Linden et al. from either metal or plastic because selection of such materials to construct a prior art device, notoriously well known to be constructed from such materials, is prima facie obvious in view of *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner in view of Rees.

Steiner discloses the claimed invention including a plurality of hollow chamber members.

Steiner does not disclose the use of flaps with at least one inlet and outlet areas of a hollow chamber.

Rees discloses the use of flaps positioned at inlet and outlet areas of a vehicle flow duct.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide at least one of the hollow chamber members with inlet and outlet flaps as taught by Rees for enhanced aerodynamic control.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (571)272-6664. The examiner can normally be reached on Tuesday-Friday 6:30 AM-3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (571)-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph D. Pape/
Primary Examiner, Art Unit 3612

Jdp

9/7/08